

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TAMERA and CHADDWIC SMITH,

Plaintiffs/Petitioners,

CASE NO. 03-74213

v.

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

HON. ELIZABETH M. PEZZETTI, JUDGE,
OAKLAND COUNTY CIRCUIT COURT;
HON. LISA SULLIVAN, JUDGE, CLINTON
COUNTY CIRCUIT COURT; AND DONNA
& JONATHAN CROMWELL.

Defendants/Respondents.

ORDER
PURSUANT TO FED. R. CIV. P. 15 DENYING PLAINTIFFS'
MOTION TO FILE THIRD AMENDED COMPLAINT

Plaintiff has moved, pursuant to Federal Rule of Civil Procedure 15(a), for leave to file a Third Amended Complaint. Rule 15 states that a party, at this stage of the proceedings, may only amend "by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." There is no written consent of the adverse parties.

This case was initially filed in 2003. Since then, Plaintiff has twice amended the complaint. The instant motion seeks to add Genesee County Probate Judge Allen J. Nelson, in his official judicial capacity, as a defendant.

Plaintiff's proposed Third Amended Complaint does not allege that they were denied access to hearings/proceedings before Judge Nelson that occurred subsequent to, and as a result of, this Court's Order of April 4, 2005. Indeed, Plaintiffs proposed Third Amended Complaint

asks this Court to stay the state court proceedings before Judge Nelson.

This Court's Order of April 4, 2005 was grounded on the fact that Plaintiffs, in previous state court proceedings, were deprived of their procedural due process rights to notice and a hearing under the United States Constitution.

The Court concludes that, given that the ongoing state proceedings provide Plaintiffs with notice and the right to be heard, justice does not require that this Court grant leave to permit Plaintiff to file a Third Amended Complaint in 2006.

Accordingly, the Court denies Plaintiffs' Motion for Leave to File Third Amended Complaint.

SO ORDERED.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: July 31, 2006

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on July 31, 2006.

s/Denise Goodine
Case Manager